AUTHORITY: Section 9 (Tenth) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819 (Tenth); sections 12(f)(3) and (4) of the FDI Act, 12 U.S.C. 1822(f)(3) and (4); and section 19 of Pub. L. 103–204, 107 Stat. 2369.

SOURCE: 67 FR 69991, Nov. 20, 2002, unless otherwise noted.

§ 366.0 Definitions.

As used in this part:

(a) The word *person* refers to an individual, corporation, partnership, or other entity with a legally independent existence.

(b) The terms *we, our*, and *us* refer to the Federal Deposit Insurance Corporation (FDIC), except when acting as conservator or operator of a bridge bank.

(c) The terms *I, me, my, mine, you*, and *yourself* refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on our behalf.

(d) The phrase *insured depository institution* refers to any bank or savings association whose deposits are insured by the FDIC.

§ 366.1 What is the purpose of this part?

This part establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on our behalf. This part includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with section 12(f)(3) of the FDI Act, 12 U.S.C. 1822(f)(3), and the prohibitions and the requirements for submission of information in accordance with section 12(f)(4) of the FDI Act, 12 U.S.C. 1822(f)(4).

§ 366.2 What is the scope of this part?

(a) This part applies to a person who submits an offer to perform or performs, directly or indirectly, a contractual service or function on our behalf.

(b) This part does not apply to:

(1) An FDIC employee for the purposes of title 18, United States Code; or

(2) The FDIC when we operate an insured depository institution such as a bridge bank or conservatorship.

§ 366.3 Who cannot perform contractual services for the FDIC?

We will not enter into a contract with you to perform a service or function on our behalf, if you or any person that owns or controls you, or any entity you own or control:

(a) Has a felony conviction;

(b) Was removed from or is prohibited from participating in the affairs of an insured depository institution as a result of a federal banking agency final enforcement action;

(c) Has a pattern or practice of defalcation; or

(d) Is responsible for a substantial loss to a federal deposit insurance fund.

§ 366.4 When is there a pattern or practice of defalcation?

(a) You have a pattern or practice of defalcation under §366.3(c) when you, any person that owns or controls you, or any entity you own or control has a legal responsibility for the payment on at least two obligations that are:

(1) To one or more insured depository institutions;

(2) More than 90 days delinquent in the payment of principal, interest, or a combination thereof; and

(3) More than $50,000 each.

(b) The following are examples of when you have or do not have a pattern or practice of defalcation. These examples are not inclusive.

(1) You have five loans at insured depository institutions. Three of them are 90 days past due. Two of the three loans have outstanding balances of